

201401986

James Cooney

Thomas Mikalinis

On February 25, 2014, PO James Cooney, driving a van, saw a young man leave a building and put a bag of marijuana in his jacket pocket. He initially pursued the man but then radioed to another officer. This other officer, as captured by security camera footage obtained by the CCRB, first drew his gun on the young man, and then when the man stopped running, pushed him backwards, then struck him in the face with his police radio, causing a one inch laceration to the man's head that required six stitches. The officer who struck the man stated that he punched him because he would not take his hands out of his pockets. But the video shows both that the officer hit him with his NYPD radio, used as a club, and that the man's hands were away from his body before he was struck. The security video later shows the man sitting down and an expanding dark spot, which "the investigation determined to be blood" expanding from the spot of the injury as he is handcuffed.

Both PO Cooney and PO Mikalinis, who observed the incident but did not strike the man, made statements that were disproven by the security footage. PO Mikalinis stated that the officer punched the man, but denied he struck him with his radio. Both officers denied seeing any injury to the man, but the video footage shows that he was bleeding significantly from the time he had been struck.

The officer who struck the man retired from the NYPD before any discipline could be imposed for the charges that the CCRB substantiated against him. The CCRB found that both PO Cooney and PO Mikalinis made false statements in their CCRB interviews. Neither was disciplined by the NYPD.

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Keyne Jean Villert	Team: Team # 3	CCRB Case #: 201401986	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tue, 02/25/2014 12:05 PM	Location of Incident: [REDACTED]	Precinct: 90	18 Mo. SOL 08/25/2015	EO SOL 8/25/2015	
Date/Time CV Reported Tue, 02/25/2014 12:34 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 02/28/2014 9:49 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Juan Ruiz	30382	§ 87(2)(b)	PSA 3
2. POM James Cooney	12527	§ 87(2)(b)	PSA 3
3. POM Thomas Mikalini	21162	§ 87(2)(b)	PSA 3

Officer(s)	Allegation	Investigator Recommendation
A . POM James Cooney	Abuse of Authority: PO James Cooney facilitated the stop of § 87(2)(b).	A . § 87(2)(g)
B . POM Juan Ruiz	Force: PO Juan Ruiz pointed his gun at § 87(2)(b).	B . § 87(2)(g)
C . POM Juan Ruiz	Force: PO Juan Ruiz struck § 87(2)(b) with a radio.	C . § 87(2)(g)
D . POM Juan Ruiz	Abuse of Authority: PO Juan Ruiz threatened to damage § 87(2)(b)'s property.	D . § 87(2)(g)
E . POM James Cooney	Abuse of Authority: PO James Cooney threatened to damage § 87(2)(b) property.	E . § 87(2)(g)
F . POM Thomas Mikalini	Abuse of Authority: PO Thomas Mikalini threatened to damage § 87(2)(b) property.	F . § 87(2)(g)
§ 87(2)(b), § 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
H . POM Thomas Mikalini	Other: PO Thomas Mikalini provided a false official statement.	H . § 87(2)(g)
I . POM James Cooney	Other: PO James Cooney provided a false official statement.	I . § 87(2)(g)

### Case Summary

On February 25, 2014, § 87(2)(b) filed this complaint, on behalf of his nephew § 87(2)(b) with the Internal Affairs Bureau (IAB) via telephone. § 87(2)(b) did not witness the incident. On February 28, 2014, the Civilian Complaint Review (CCRB) received this complaint from IAB under log number 2014-7082.

On February 25, 2014, at approximately 12:05 p.m., § 87(2)(b) was walking away from § 87(2)(b) in Brooklyn when officers in an unmarked patrol car approached him. The following allegations resulted:

- **Allegation A – Abuse of Authority PO James Cooney facilitated the stop of**

§ 87(2)(b)

§ 87(2)(g)

- **Allegation B – Force: PO Juan Ruiz pointed his gun at § 87(2)(b)**

§ 87(2)(g)

- **Allegation C – Force: PO Juan Ruiz struck § 87(2)(b) with a radio.**

§ 87(2)(g)

- **Allegation D – Abuse of Authority: PO Juan Ruiz threatened to damage**

§ 87(2)(b) s property.

- **Allegation E – Abuse of Authority: PO James Cooney threatened to damage**

§ 87(2)(b) s property.

- **Allegation F – Abuse of Authority: PO Thomas Mikalinis threatened to damage**

§ 87(2)(b) s property.

§ 87(2)(g)

- **§ 87(4-b), § 87(2)(g)**

- **Allegation H – Abuse of Authority: PO Thomas Mikalinis provided a false official statement.**
- **Allegation I – Abuse of Authority: PO James Cooney provided a false official statement.**

§ 87(2)(g)

This case was initially assigned to Inv. Lesley Henry on March 18, 2014. Following Inv. Henry's departure from the CCRB, the case was reassigned to the undersigned investigator on June 20, 2014.

This case was not eligible for mediation because § 87(2)(b) was arrested as a result of the incident and because he sustained an injury to his head following his being struck in the head with a police radio.

### **Results of Investigation**

#### **Video Footage (Encl. B7-B22)**

On July 9, 2014, § 87(2)(b) provided to the undersigned investigator video footage of the incident captured by a security camera located outside of § 87(2)(b). The recording is located on digital file "201401986\_20140709\_1443\_DM.mov," in Investigative Action number 58. The recording shows the following:

PO1, who appears to be a white male with greying dark hair wearing a uniform with multiple hash marks on the left sleeve of his shirt, exits § 87(2)(b) and immediately pulls out a dark object from the right side of his belt which he then points at CV1, who appears to be a light-skinned man wearing a bulky bubble jacket, running toward him. PO1 was identified via investigation as PO Juan Ruiz from Police Service Area 3 and CV1 was identified via investigation as § 87(2)(b). PO Ruiz is also carrying a police radio in his left hand. § 87(2)(b) left hand is clearly away from his waist, and moving in a running motion; however, his right hand and right lower arm appear very close to his waist, with minimal movement, and are hidden by his upper body due to either the angle of the camera or § 87(2)(b) having his hand inside his clothing.

§ 87(2)(b) immediately slows down and PO Ruiz subsequently blocks his path, pushes him back, and then strikes him once with his police radio in a hammering motion, with the radio acting as the head of the hammer, causing § 87(2)(b) to place his hands toward his face and take multiple steps away from the camera's view. Prior to the strike, PO Ruiz held the radio upright with its bottom part sticking out under the hand holding it. At the 0:21 mark, prior to the strike, § 87(2)(b) right upper-arm is seen away from his chest, creating a visible gap. PO Ruiz eventually brings § 87(2)(b) down to the ground face down and is joined by PO2 and PO3, both of whom appear to be light-skinned men, who then handcuff § 87(2)(b). PO2 and PO3 were identified via investigation as PO Thomas Mikalinis and PO James Cooney, from Police Service Area 3, respectively. PO Cooney arrived a few seconds after PO Mikalinis. At that point, a dark spot, which expands as time passes, then appears under § 87(2)(b) head.

## Civilian Statements

### Victim: § 87(2)(b)

- § 87(2)(b)

## Photograph Taken with a Cell Phone

On July 9, 2014, § 87(2)(b) provided to the undersigned investigator a photograph using a cell phone taken by § 87(2)(b) who is mentioned below, showing him apparently sitting down on the ground and handcuffed against a wall with officers standing in front of him. The photograph shows what appears to be multiple bloodstains on § 87(2)(b) face (encl. D7).

## Arrest Photographs

§ 87(2)(b) arrest photographs show that an adhesive bandage was applied to § 87(2)(b) forehead area above his left eye. Some redness is also apparent on his forehead (encl. D5).

## Statements to Medical Personnel

On February 25, 2014, § 87(2)(b) stated to Emergency Medical Technicians (EMTs) that an officer hit him in the head with a radio.

On the same day, § 87(2)(b) stated to medical personnel from § 87(2)(b) that he sustained a laceration above his left eyebrow during an assault (encl. MR1-MR27).

## CCRB Testimony

On March 18, 2014, § 87(2)(b) was interviewed at the CCRB (encl. D3). § 87(2)(g)

On February 25, 2014, at approximately 12:05 p.m., § 87(2)(b) was walking away from his building, located at § 87(2)(b) in Brooklyn, when PO Mikalini exited a nearby unmarked patrol van and stated, "Hey you, come over here." At that point, § 87(2)(b) ran away from PO Mikalini, who chased after him, because he had marijuana inside one of his jacket pockets.

§ 87(2)(b) ran back toward § 87(2)(b) and observed PO Ruiz exit it and point his gun at him while stating, "Take your hands out of your pockets." § 87(2)(b) stopped, complied with the directive, and raised his hands up. At that point, PO Ruiz once again ordered § 87(2)(b) to take his hands out of his pockets and then struck him in the left side of his forehead with either a gun or a radio, which PO Ruiz held in his other hand.

§ 87(2)(b) first fell down to the ground and then placed his hands behind his back. PO Ruiz then pinned § 87(2)(b) down and PO Mikalini, who had just caught up with § 87(2)(b) handcuffed him. § 87(2)(b) was then placed against a nearby wall while his face bled. § 87(2)(b) requested medical attention. There, § 87(2)(b) friend § 87(2)(b) witnessed the incident and started recording it with his phone. However, the officers ordered § 87(2)(b) to delete the video otherwise they would break his phone. § 87(2)(b) deleted the video. § 87(2)(b) does not know § 87(2)(b) real name.

Soon thereafter, PO Cooney drove § 87(2)(b) and the officers to the Police Service Area 3 stationhouse. There, the marijuana was recovered from § 87(2)(b) jacket and an ambulance then arrived.

**Witness:** § 87(2)(b)

- § 87(2)(b)

**CCRB Testimony**

On September 8, 2014, § 87(2)(b) was interviewed over the phone (encl. E2). The CCRB received her signed and notarized verification form on September 23, 2014. Her statement is summarized below.

On February 25, 2014, at approximately 12:05 p.m., § 87(2)(b) was inside her apartment, located on the fifth floor of § 87(2)(b) when she observed, through her window, § 87(2)(b) outside of the building. Two uniformed officers, who § 87(2)(b) could only describe as white men, followed § 87(2)(b) who then started walking quickly. § 87(2)(b) hands were outside of his clothing by his sides.

Thereafter, § 87(2)(b) observed the two officers push § 87(2)(b) against a wall and then one of the officers strike him in the head with an object. § 87(2)(b) then walked away from her window and did not make any additional observation of the incident.

§ 87(2)(b) denied observing § 87(2)(b) run away from the officers. § 87(2)(b) explained that she was not wearing her glasses at the time of the incident and that she thus could not distinguish details.

**Attempts to Contact Civilians**

Between April 16, and July 9, 2014, Inv. Henry and the undersigned investigator made multiple contact attempts to § 87(2)(b) via phone and mail, using his contact information provided by § 87(2)(b). All contact attempts were unsuccessful and were exhausted. Lexis-Nexis databases searches using said contact information yielded negative results (encl. O1-O3). Because § 87(2)(b) did not know § 87(2)(b) real name, no other database search could be conducted for contact purposes.

On December 22, 2014, Supervising Investigator Edwin Pena conducted a phone number search using the number listed for § 87(2)(b) which indicated that it was listed for Bandwidth.com, a large voice over internet protocol (VoIP) provider to several online companies offering the VoIP service to consumers. As such, no subscriber information for § 87(2)(b) from a mobile phone carrier, could be obtained using said number.

On July 9, 2014, § 87(2)(b) appeared at the CCRB to provide the above described footage. At that time, § 87(2)(b) mentioned that his friend § 87(2)(b) whose real name he did not know, had witnessed the incident; however, he also stated that § 87(2)(b) refused to cooperate with this investigation for the time being. § 87(2)(b) further mentioned that he did not have any contact information for § 87(2)(b).

**NYPD Statements:**

**Subject Officer: PO JAMES COONEY**

- PO Cooney was § 87(2)(b) old at the time of the incident. He is a Native American man, is 5'11" tall, weighs 210 pounds, and has brown hair and brown eyes.
- On February 25, 2014, PO Cooney was assigned to the Police Service Area's Conditions Unit. PO Cooney was dressed in uniform and was working with PO Mikalinis and PO Ruiz in an unmarked patrol van. PO Cooney worked from 10 a.m. to 6:35 p.m.

### Memo Book Entries

At 12:05 p.m., PO Ruiz arrested § 87(2)(b) in front of § 87(2)(b) after he was observed placing a bag of marijuana in his left pocket with his left hand. § 87(2)(b) fled from § 87(2)(b) to § 87(2)(b). Marijuana was recovered from § 87(2)(b) pocket. § 87(2)(b) resisted. At 12:45 p.m., PO Cooney escorted § 87(2)(b) to § 87(2)(b) § 87(2)(b) due to a laceration to his forehead (encl. F1-F3).

### CCRB Testimony

On November 20, 2014, PO Cooney was interviewed at the CCRB (encl. F5). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

On February 25, 2014, at approximately 12:05 p.m., PO Cooney was driving an unmarked patrol van in the vicinity of § 87(2)(b) when he observed § 87(2)(b) on a sidewalk, approximately five feet away from him, hold a clear bag containing marijuana in its vegetative state and then place it inside one of his pockets. PO Cooney then informed PO Mikalinis of his observation who then opened a side door of the van, at which point § 87(2)(b) started running away toward § 87(2)(b). As § 87(2)(b) ran away, he placed his hands inside his waistband and PO Cooney communicated that observation to his partners. PO Cooney also mentioned to PO Ruiz, who was posted inside of § 87(2)(b) that the officers were chasing after a man running toward him.

PO Cooney initially pursued § 87(2)(b) in the van, but eventually exited it and caught up with him on foot. PO Cooney did not observe PO Ruiz use any physical force against § 87(2)(b) or point his gun at him. PO Cooney did not observe anyone attempt to capture the incident on a phone. PO Cooney denied threatening anyone that he would break their phones, or hearing any officer do so. PO Cooney was not aware of any additional suspicious factors involving § 87(2)(b) around the time of the incident.

During this CCRB interview, PO Cooney was asked whether § 87(2)(b) was injured, at which point he replied, "Not that I saw at that time." It should be noted that the line of questioning immediately prior to his response was related to his observations and the actions he took at the incident location. PO Cooney did admit that he observed some blood on § 87(2)(b) forehead at the stationhouse and that he eventually transported him to a hospital. Later, the undersigned investigator stated to PO Cooney, "You mentioned that you didn't see any bleeding on him at the scene," to which he replied, "No sir." PO Cooney also reviewed the above video recording of the incident, and when asked what the dark spot under § 87(2)(b) head was at the 1:22 mark, he replied that he did not know. However, PO Cooney stated during his GO-15 interview that he observed bleeding coming from the forehead of § 87(2)(b) and scratches on his hands at the incident location.

### Subject Officer: PO THOMAS MIKALINIS

- *PO Mikalinis was § 87(2)(b) old at the time of the incident. He is a white man, is 5'10" tall, weighs 195 pounds, and has brown hair and brown eyes.*
- *On February 25, 2014, PO Mikalinis worked the same tour and assignment as PO Cooney.*

### Memo Book Entries

At 12:05 p.m., PO Ruiz arrested § 87(2)(b) at § 87(2)(b). PO Cooney observed § 87(2)(b) place a bag of marijuana into his left pocket with his left hand. § 87(2)(b) then fled from the front of § 87(2)(b) to § 87(2)(b) where he was arrested. § 87(2)(b)



was injured as a result of a fall while running and being forcefully arrested. § 87(2)(b) resisted arrest. PO Mikalinis found 60 Ziploc bags on § 87(2)(b) (encl. G1-G4).

### **CCRB Testimony**

On November 20, 2014, PO Mikalinis was interviewed at the CCRB (encl. G6). § 87(2)(g)

PO Mikalinis did not observe § 87(2)(b) hold the marijuana in his hand; however, PO Mikalinis was informed about that observation by PO Cooney. PO Mikalinis pursued § 87(2)(b) on foot and observed him approach § 87(2)(b). PO Mikalinis subsequently observed PO Ruiz open the door to the building, point his gun at § 87(2)(b) and then order § 87(2)(b) to remove his hands from his pockets and get down to the ground. § 87(2)(b) failed to comply with the directives by standing still, at which point PO Mikalinis observed PO Ruiz strike him in the face with “just one quick punch,” causing § 87(2)(b) to fall down to the ground. At that time, PO Ruiz was holding a radio in one of his hands; however, PO Mikalinis did not see him use it to strike § 87(2)(b).

PO Mikalinis then caught up with § 87(2)(b) and handcuffed him. PO Mikalinis did not observe anyone attempt to capture the incident on a phone. PO Mikalinis denied threatening anyone that he would break their phones, or hearing any officer do so. PO Mikalinis believes that § 87(2)(b) still had his hands inside his waistband when he was struck.

### **Officer Juan Ruiz IAB Statement**

PO Ruiz was not interviewed due to his pending retirement from the NYPD. The NYPD’s Monitoring and Analysis Section (MAS) indicated to the undersigned investigator, on November 25, 2014, that PO Ruiz has been on terminal leave since November 6, 2014 (encl. Q1).

However, on December 18, 2014, the undersigned investigator received from Sgt. Jose Mendez, from IAB Group 54, the GO-15 interview of PO Ruiz conducted by him on May 14, 2014, which is summarized below (encl. G7).

At the time of the incident, PO Ruiz was inside § 87(2)(b) when he heard PO Cooney repeatedly state over the point-to-point radio, “Running towards you.” PO Cooney mentioned that it was “the kid that” PO Ruiz had seen minutes earlier. PO Ruiz then ran to the front door of § 87(2)(b) and observed § 87(2)(b) run up stairs, stumble, and come toward him.

Thereafter, PO Ruiz exited the building and observed § 87(2)(b) with his hands inside his jacket pockets. However, PO Ruiz later indicated that only § 87(2)(b) right hand was inside a pocket throughout the incident. PO Ruiz drew his gun and ordered § 87(2)(b) to stop moving, get down to the ground, and show his hands. PO Ruiz drew his firearm because § 87(2)(b) hand was inside a pocket.

§ 87(2)(b) stopped running but then moved sideways with his hand still in his pocket. PO Ruiz then ordered § 87(2)(b) to get down again and “just threw a punch at him” in the face, causing him to step back and fall down to the ground. PO Ruiz explained he “swung” at § 87(2)(b). When asked what struck § 87(2)(b) PO Ruiz replied, “I think it was my hand,” and added, “I did have my radio in my hand.” Sgt. Mendez then stated, “But you believe it was more with the punch,” to which PO Ruiz replied, “Yes sir.” PO Mikalinis then arrived, pulled § 87(2)(b) hand out of his pocket, and then handcuffed him. Soon thereafter, PO Cooney arrived at the scene.



No additional information was communicated over the radio to PO Ruiz. PO Ruiz explained that he did not know whether § 87(2)(b) would run away from him while adding that § 87(2)(b) hands were inside his pockets immediately prior to the punch.

#### **PO Juan Ruiz Memo Book**

PO Ruiz entered the following entries: At 12:05 p.m., PO Ruiz arrested § 87(2)(b) in front of § 87(2)(b) for the § 87(2)(b), § 87(2)(a) CPL 160.50 § 87(2)(b) were recovered from § 87(2)(b) left jacket pocket (encl. I1-I3).

#### **Complaint Report Number 2014-090-01193 and Arrest Report Number K14616565**

§ 87(2)(b), § 87(2)(a) CPL 160.50  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

#### **Officer Juan Ruiz Not Interviewed**

PO Ruiz was not interviewed due to his pending retirement from the NYPD. The NYPD's Monitoring and Analysis Section (MAS) indicated to the undersigned investigator, on November 25, 2014, that PO Ruiz has been on terminal leave since November 6, 2014 (encl. Q1).

#### **Medical Records**

##### **Pre-hospital Care Report**

The report indicates that an ambulance arrived at the Police Service Area 3 stationhouse on February 25, 2014, at approximately 12:19 p.m., and then transported § 87(2)(b) to § 87(2)(b) at 12:59 p.m. The report also indicates that § 87(2)(b) presented a one inch long laceration to the left side of his forehead and abrasions to his left knee and the palm of his right hand (encl. MR11-MR13).

§ 87(2)(b)

The records indicate that § 87(2)(b) was evaluated at the hospital on § 87(2)(b) § 87(2)(b), with a bandage already in place and no active bleeding. § 87(2)(b) was diagnosed with an open wound to his face for which he received six sutures (encl. MR5-MR10 and MR14-MR27).

#### **NYPD Documents**

##### **Police Service Area 3 Roll Call**

The roll call indicates that PO Mikalinis, PO Ruiz, and PO Cooney were assigned to Automobile Conditions together in vehicle number 9503 (encl. H1-H12).

##### **Police Service Area 3 Command Log**

The Command Log indicates that § 87(2)(b) arrived at the PSA 3 stationhouse at 12:30 p.m. and that he had a laceration to his forehead (encl. H13-H19).

##### **Property Clerk Invoice Number** § 87(2)(b)

§ 87(2)(b), § 87(2)(a) CPL 160.50  
§ 87(2)(b) (encl. K1).

### **Misdemeanor Narcotics Possession Fact Sheet**

§ 87(2)(b), § 87(2)(a) CPL 160.50

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### **Medical Treatment of Prisoner Report**

The report, signed by PO Ruiz and PO Cooney, the arresting and escorting officers, respectively, indicates that § 87(2)(b) was transported to Woodhull Hospital Center on February 25, 2014, at 12:30 a.m. due to a laceration to his face. The narrative section only indicates that § 87(2)(b) sustained the laceration as a result of resisting arrest (encl. K7).

### **Internal Affairs Bureau Case File**

The file indicates that PO Ruiz was exonerated in his use of the force against § 87(2)(b). The file explains that § 87(2)(b) refused to remove his hands from his pockets, at which point PO Ruiz struck him once in the face with his fist, inside of which he had a radio. The file adds that video footage supports the statement provided by PO Ruiz. The file does not discuss the video footage any further. The file does include a separate report filed by Capt. Stefan Komar, from Patrol Borough Brooklyn North, which indicates that PO Ruiz acted appropriately, in the manner described above, and asserts that § 87(2)(b) admitted to failing to remove his hands from his pockets prior to the strike. However, the audio recording of § 87(2)(b) interview to IAB indicates that § 87(2)(b) stated that he removed his hands from his pockets prior to the strike. This part of the interview is correctly reflected in the corresponding interview summary made by Sgt. Jose Mendez, from IAB Group 54, who investigated the case (encl. K8-K43).

### **Attempt to Obtain SPRINT Report**

On March 28, 2014, Inv. Henry requested from the NYPD's Monitoring and Analysis Section a copy of any SPRINT report generated in regard to this incident. Inv. Henry eventually received the request back with a note indicating that no such report was found (encl. Q5).

### **Arrest for Incident and Disposition**

- As of January 22, 2015, Office of Court Administration records do not show § 87(2)(b) criminal case related to this incident on file (encl. L1).

### **Status of Civil Proceedings**

- § 87(2)(b) filed a Notice of Claim with the City of New York on April 10, 2014, claiming that he was falsely arrested and was assaulted and battered by an officer and seeking unspecified amount of money as redress (encl. M2-M3).
- On January 13, 2015, the undersigned investigator spoke with § 87(2)(b), § 87(2)(b) civil attorney, who stated that he refused to allow the CCRB to obtain a copy of any 50-h hearing transcript related to this incident.

### **Civilian Criminal History**

As of January 22, 2014, Office of Court Administration records reveal the following criminal convictions for § 87(2)(b) (encl. L2-L9):

- § 87(2)(b) § 87(2)(b)
- § 87(2)(b) § 87(2)(b)
- § 87(2)(b) § 87(2)(b)

### **Civilian CCRB History**

- § 87(2)(b) has filed previously filed a CCRB complaint (encl. A53).

### **Subject Officers CCRB History**

- PO Cooney has been a member of the service for seven years and this is the first CCRB complaint filed against him. (encl. A51).
- PO Mikalinis has been a member of the service for ten years and there are no substantiated CCRB allegations against him (encl. A52).
- PO Ruiz has been a member of the service for nineteen years and there are no substantiated CCRB allegations against him. There are three allegations of strikes with objects, in addition to those related to this case, against PO Ruiz. Although one of the allegations was unfounded, the other two were unsubstantiated and closed as complainant unavailable, respectively (encl. A49-A50).

### **Conclusion**

#### **Identification of Subject Officers**

PO Cooney stated that he was the officer who made the observation of the marijuana and that he informed his partners, who then chased after § 87(2)(b) of it. PO Cooney and PO Mikalinis identified PO Ruiz as the officer who exited § 87(2)(b) and then physically stopped § 87(2)(b) which is consistent with video evidence.

#### **Investigative Findings and Recommendations**

##### **Allegation A – Abuse of Authority: PO James Cooney facilitated the stop of**

§ 87(2)(b)

It is undisputed that PO Mikalinis and PO Ruiz pursued and stopped § 87(2)(b) as a result of PO Cooney's alleged observation of his holding marijuana in plain view and placing it inside a pocket. It is further undisputed that PO Ruiz was not present at the initiation of the incident.

§ 87(2)(b) admitted that he was in possession of marijuana at the initiation of the incident; however, he indicated that it was contained inside his clothing.

PO Mikalinis denied observing § 87(2)(b) hold the marijuana in plain view; however, he confirmed that PO Ruiz informed him of that observation.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

##### **Allegation B – Force: PO Juan Ruiz pointed his gun at**

§ 87(2)(b)

It is undisputed that § 87(2)(b) was in possession of marijuana at the time of the incident and fled from the officers who subsequently pursued and apprehended him. It is also undisputed that § 87(2)(b) had at least one of his hands inside one of his pockets while running. It is further undisputed that PO Ruiz exited § 87(2)(b) drew his gun, and pointed it at § 87(2)(b) PO Ruiz' statement to IAB indicates that he pointed his gun at § 87(2)(b) because § 87(2)(b) had one of his hands inside one of his pockets.

PD v. Gliner, OATH Index No. 955/00 (2000), held that "an officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another's personal safety." It indicates that the reasonableness of the officer's actions, given the totality of the

surrounding circumstances, must be assessed when determining whether drawing and pointing a firearm constitutes misconduct. It further indicates that broad discretion and due deference is given to an officer's judgment at the time and scene of the incident (encl. A1-A21).

§ 87(2)(g)

**Allegation C – Force: PO Juan Ruiz struck § 87(2)(b) with a radio.**

It is undisputed that PO Ruiz held a radio in one of his hands and a gun in the other. It is also undisputed that § 87(2)(b) had one of his hands inside one of his pockets as he ran from the officers. It is further undisputed that PO Ruiz ordered § 87(2)(b) to remove his hands from his pockets, and that PO Ruiz eventually struck § 87(2)(b) once in the face.

§ 87(2)(b) stated that after PO Ruiz pointed a gun at him, he stopped running and then complied with the orders to remove his hands from his pockets, at which point PO Ruiz struck him with either a gun or radio. § 87(2)(b) CCRB and IAB statements were consistent with each other.

PO Ruiz could not be interviewed due to his terminal leave from the NYPD; however, he stated in his IAB statement that he punched § 87(2)(b) once while holding a radio in that same hand. PO Ruiz explained that he struck § 87(2)(b) with his hand and not the radio. PO Ruiz also reported fearing for his safety. PO Ruiz explained that he did not know whether § 87(2)(b) would run away from him while adding that § 87(2)(b) right hand was inside a pocket immediately prior to the punch.

PO Mikalini stated that he observed PO Ruiz punch § 87(2)(b) and not strike him with a radio. PO Cooney indicated that he did not observe the punch or strike from his vantage point.

Video evidence clearly shows that PO Ruiz held the radio upright with its bottom sticking out under his hand, and that he struck § 87(2)(b) with it using a hammering motion. However, the video also shows that, prior to the strike, PO Ruiz grabbed and pushed § 87(2)(b) back while pointing a gun at him. Furthermore, the video shows that § 87(2)(b) right arm was away from his upper body, prior to the strike, thus creating a clear gap despite his wearing of a bulky bubble jacket (encl. B14-B17). Medical records indicate that § 87(2)(b) sustained a one inch long laceration which required six stitches.

According to the Patrol Guide Procedure, 203-11 (encl. A22-A23), only that amount of force necessary to overcome resistance will be used to effect an arrest.

Moreover, PD v. Stiso, OATH Index No. 1886/99 (1999), held that an officer was warranted in striking a civilian resisting arrest, as a protective measure, in the head with a flashlight subsequent to the civilian punching him. It also held that the reasonableness of the officer's action was not diminished, under the circumstances, based on the fact that he happened to have been holding a flashlight (encl. A28-A32).

§ 87(2)(g)

[REDACTED]

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§ 87(2)(b) s property.

§ 87(2)(b) s property.

§ 87(2)(b) s property.

PO Cooney and PO Mikalinis both denied making the alleged threat, or hearing any officer do so. PO Cooney and PO Mikalinis both indicated that they did not observe any civilian capture video footage of the incident. PO Ruiz could not be interviewed due to his pending retirement.

§ 87(2)(g)

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§ 87(4-b), § 87(2)(g)

**Allegation H – Abuse of Authority: PO Thomas Mikalinis provided a false official statement.**

**Allegation I – Abuse of Authority: PO James Cooney provided a false official statement.**

§ 87(2)(g)

It is also undisputed that PO Mikalinis and PO Cooney assisted with the handcuffing of § 87(2)(b).

In his CCRB statement, PO Mikalinis stated that he observed PO Ruiz punch § 87(2)(b) and not strike him with a radio. PO Mikalinis acknowledged that PO Ruiz punched § 87(2)(b) with the hand which held his radio. In his IAB statement, PO Cooney stated that he observed blood on § 87(2)(b) and scratches to his hands at the arrest location; however, when asked during his CCRB interview whether § 87(2)(b) was injured, he replied, “Not that I saw at that time.” It should be noted that the line of questioning immediately prior to his response was related to his observations and the actions he took at the incident location.

Video evidence shows that a dark spot, which the investigation determined to be blood, eventually appears under § 87(2)(b) head and expands as he is handcuffed.

According to Patrol Guide Procedure 203-08 (encl. A27), “the intentional making of a false statement is prohibited, and will be subject to disciplinary action, up to and including dismissal,” absent exceptional circumstances.

§ 87(2)(g)

Team:   3  

Investigator: \_\_\_\_\_  
Signature                      Print                      Date

Supervisor: \_\_\_\_\_  
Title/Signature              Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature              Print                      Date



Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date